





**Moongdeewattanaroj (Migration) [2024] ARTA 108 (25 November 2024)**  
**Decision and**

**Reasons for Decision**

|                         |                                                                                                            |
|-------------------------|------------------------------------------------------------------------------------------------------------|
| <b>Applicant:</b>       | Miss Maneerat Moongdeewattanaroj                                                                           |
| <b>Representative:</b>  | Mr David Robert Jones                                                                                      |
| <b>Respondent:</b>      | Minister for Home Affairs                                                                                  |
| <b>Tribunal Number:</b> | 2109927                                                                                                    |
| <b>Tribunal:</b>        | Edward Howard                                                                                              |
| <b>Date:</b>            | 25 November 2024                                                                                           |
| <b>Place:</b>           | Brisbane                                                                                                   |
| <b>Decision:</b>        | The Tribunal affirms the decision not to grant the review applicant a Partner (Temporary) (Class UK) visa. |

Statement made on 25 November 2024 at 11:19am

**CATCHWORDS**

*MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 – financial aspects of the parties’ relationship do not support the parties being in a genuine and continuing relationship – victim of family violence – relationship ceased – parties did not have joint ownership of real estate or any other major assets – limited evidence as to the nature of their household and living arrangements – not satisfied that the review applicant had been in a de facto relationship for at least the period of 12 months ending immediately before the date of application – decision under review affirmed*

**LEGISLATION**

*Migration Act 1958, ss 5CB, 65*

*Migration Regulations 1994, rr 1.09, 2.03, Schedule 2, cls 820.211, 820.221*

**CASES**

*Hasran v MIAC [2010] FCAFC 40*

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the review applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The review applicant applied for the visa on 8 July 2019 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the review applicant did not satisfy cl 820.211(2).
4. The review applicant appeared before the Tribunal on 21 November 2024 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Thai and English languages. The review applicant was represented in relation to the review.
5. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

### 6. BACKGROUND

7. The review applicant is Ms Maneerat Moongdeewattanaroj, a citizen of Thailand and the sponsor is Mr Craig Stuart Sommers, an Australian citizen.
8. The review applicant arrived in Australia on 14 September 2018. She was introduced to the sponsor by a Thai friend shortly after her arrival. Her evidence is that following their initial meeting the parties arranged to meet for coffee and then dinner. The relationship developed and according to the review applicant's visa application form, they committed to a shared life together to the exclusion of all others on 25 November 2018.
9. On 8 July 2019, the review applicant lodged an *Application for migration to Australia by a partner*.
10. The review applicant's evidence is that the parties relationship broke down due to family violence and they separated in or around September/October 2020.
11. On 21 July 2021, the delegate made a decision refusing the partner visa application. Subsequently, the review applicant lodged an Application for Review with the Administrative Appeals Tribunal (now the Administrative Review Tribunal) (the Tribunal).

### 12. ISSUES AND LAW

13. There is a two stage process for onshore Partner visas. A visa applicant must first hold a provisional visa, enabling them to remain in Australia on a temporary basis, prior to the grant of a permanent visa. The grant of a permanent visa would generally depend on whether the relationship has continued for a period of at least two years. In this matter, the Tribunal is considering the first, temporary stage.

14. Where the Tribunal is considering a criterion that requires the definition of spouse or de facto partner to be met at the time of the visa application, the information supplied in relation to the reg 1.09A(3) matters may relate to circumstances after the time of application. In forming a view of the relationship at the time of application, the Tribunal must consider all relevant evidence, which may include evidence of events after the date of application insofar as it assists in the task of determining whether the visa applicant and the sponsor were in a partner relationship at the time of the application. Evidence of events after the visa application is relevant if it tends logically to show the existence or non-existence of facts relevant to the issue to be determined.<sup>1</sup> The Tribunal observes this to be a matter where the review applicant submitted limited documentary evidence in support of her visa application to the Department of Home Affairs and then furnished the Tribunal with further evidence that was unavailable to the primary decision maker.
15. The issue in the present case is whether at the time of the visa application and the time of this decision, the review applicant is the spouse or de facto partner of the sponsor.

### **Whether the parties are in a spouse or de facto relationship**

16. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the review applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the review applicant claims to be the de facto partner of the sponsor who is an Australian citizen.

### **17. Are the parties in a de facto relationship?**

18. 'De facto partner' is defined in 5CB of the Act, which provides that a person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s 5CB(2).
19. In forming an opinion whether they are in a de facto relationship consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.09A(3) which is attached to this decision. Each of the specific matters contained in reg 1.09A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.
20. Persons claiming to be in a de facto relationship for a partner visa must also meet the additional criteria in reg 2.03A. Both members of the couple must be at least 18 years old: reg 2.03A(2). In this case, at the time of application, the review applicant and the sponsor were at least 18 years old.
21. The review applicant must have been in the de facto relationship for at least the 12 month period ending immediately before the date of the application: reg 2.03A(3). This requirement will not apply in limited circumstances, such as: where the de facto relationship has been registered under a relevant State or Territory law (for applications made on or after 9 November 2009); where the review applicant can establish compelling and compassionate circumstances for the grant of the visa; or in certain circumstances where the sponsor held, holds or is applying for a permanent humanitarian visa.

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<sup>1</sup> *Ally v MIAC* [2008] FCAFC 49 at [32]–[35]; *Jayasinghe v MIMA* [2006] FCA 1700 at [35], citing *MIEA v Poche* (1980) 4 ALD 139 at [24] per Deane J which held that evidence of subsequent events may be taken into account if it 'tends to logically show the existence or non-existence of' the relationship at that particular time; and see also *Bretag v IRT* [1991] FCA 582 at [13]–[15].

22. The parties provided a copy of an official receipt from Queensland Courts, issued by the Southport Magistrates Court, dated 24 June 2020. The payment particulars referred to the payment being for a certified copy of a Civil Partnership Certificate: *"new registration; Craig Stewart Summers and Maneerat Moongdeewattanaoj"*.
23. However, the review applicant did not provide the department with a copy of the Civil Partnership Certificate, nor has she provided that document to the Tribunal.
24. For the reasons outlined below, the Tribunal is not satisfied that the review applicant had been in a de facto relationship for at least the period of 12 months ending immediately before the date of application.

25. **Are the other requirements for a partner relationship met?**

*Financial aspects of the relationship – including joint ownership of assets; joint liabilities; extent of pooling of financial resources; any legal obligations owed to the other party; any sharing of day-to-day household expenses.*

26. The review applicant provided to the Department copies of statements from the joint bank account held by herself and the sponsor, which cover the period from 24 January 2020 to 27 October 2020. The evidence of the review applicant is that whilst there was a joint bank account, most of the money she earned was given to the sponsor and as a result she had very little money of her own to spend.
27. The review applicant's evidence is that whilst they were living at her friends unit, they had given their postal address as care of a caravan owned by the sponsor and situated at a caravan park in Miami, Queensland. The review applicant stated that the sponsor wanted to eventually live at the caravan park but that she refused to do so.
28. The next residence was a room in a share house in Ashmore, where she recalls the rent being approximately \$300 per week. The review applicant stated that following the Covid-19 pandemic, she was told by the sponsor that she had to leave the share house at Ashmore as the landlord did not want her staying there. She then went to live with a friend at Robina for about three months.
29. After this time, the review applicant rented a room at a share house in Southport. Her evidence is that after she went to live with her friend at Robina, she never saw the sponsor again. The review applicant provided a General Tenancy Agreement for the Southport property, with the tenancy commencing on 31 October 2020.
30. The Tribunal finds that in relation to the financial aspects of the relationship, the parties did not have joint ownership of real estate or any other major assets. There is no evidence before the Tribunal that the parties had joint liabilities. The evidence of the review applicant in the visa application form (page 20, *Relationship details*) is that the sponsor supported her financially to some extent at the time of lodgement. The review applicant's evidence at the hearing was that she provided most of the money she earned to the sponsor. There is no evidence of the pooling of resources. There is no evidence before the Tribunal of any genuine financial relationship between the parties at the date of application.
31. The Tribunal is not satisfied that the financial arrangements are consistent with the financial situation of a committed and genuine partner relationship. The Tribunal places limited weight on the financial aspects of the relationship.

*Nature of the household – including any joint responsibility for care and support of children; parties' living arrangements; and any sharing of housework.*

32. The evidence of the review applicant is that the parties initially lived together in the home of a friend at Mudgeeraba, Queensland for 3 to 4 months. They then moved to a share house at Ashmore where they paid \$300 per week in rent.
33. The review applicant stated that following the Covid-19 pandemic, the landlord of the Ashmore property did not want her staying there as he had only allowed her to be there during the pandemic time. She states that she went to live with a friend at Robina for about three months before moving to a share house in Southport, where she lived alone. Her evidence is that she never saw the sponsor again after she moved out of the residence at Ashmore.
34. The review applicant has provided a General Tenancy Agreement for rental accommodation in Southport, commencing on 31 October 2020.
35. The sponsor forwarded a letter to the department on 19 September 2020 confirming that the relationship had broken down approximately four weeks prior to the date of the letter. At the hearing of this matter, the review applicant initially agreed that the relationship ended in or around September/October 2020.
36. The evidence of the review applicant is that whilst they were living together she assisted the sponsor, who required care as a result of certain medical conditions. This included both at home and taking him to attend medical appointments and treatment.
37. The review applicant claims that the parties lived together at both Mudgeeraba and Ashmore however, she has not provided any documents in the form of tenancy agreements or rental receipts.
38. Having carefully considered all the evidence, the Tribunal is of the view there is no persuasive evidence the parties lived together as a de facto couple, or that they had living arrangements consistent with that of a genuine and committed partner relationship. Whilst there is evidence that the parties may have resided in the same property, it is not evidence that they shared the household of a de facto couple or of the living arrangements of parties in a genuine partner relationship. The Tribunal places limited weight on the household aspects of the relationship.

*Social aspects of the relationship – including whether parties represent themselves to other people as being in a de facto relationship with each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.*

39. The parties have provided a Form 888 statutory declaration by a supporting witness dated 29 June 2020, stating that they had known each of the parties for approximately six months. The declaration provides only vague and generic references to what they observe of the relationship of the parties.
40. The parties provided a number of photographs of themselves together and one in the company of another person. The sponsor's daughter and a friend of the review applicant were noted as supporting witnesses in the visa application.
41. The Tribunal accepts that the evidence shows the parties represented themselves to other people as being in a relationship, albeit to a limited group of people and that they have undertaken joint social activities. The Tribunal places limited weight on the social aspects.

*Nature of persons' commitment to each other – including duration of the relationship; the length of time they have lived together; degree of*

*companionship and emotional support they draw from each other; and whether they see the relationship as long-term.*

42. The review applicant arrived in Australia on 14 September 2018. She was introduced to the sponsor by a Thai friend shortly after her arrival. Her evidence is that the parties then arranged to meet for coffee and then dinner. The relationship developed and according to the review applicant's visa application form, they committed to a shared life together to the exclusion of all others on 25 November 2018.
43. The evidence of the review applicant is that the parties lived for 3-4 months in a room at the residence of her friend at Mudgeeraba, Queensland. They then moved to a share house in Ashmore, renting a room there for approximately \$300 per week.
44. The evidence of the review applicant is that she left the Ashmore residence at the request of the landlord and moved in with a friend at Robina for about three months, prior to renting her own room at a residence in Southport. There is a tenancy document for the Southport residence commencing on 31 October 2020.
45. The review applicant has alleged that the relationship ended as a result of family violence committed against her by the sponsor during the period of their relationship. She gave evidence that he was violent towards her on two occasions and regularly forced her to give him most of her income. She claims that he threatened multiple times to her that he would "cancel your visa" if she did not give him the money requested. She estimated that this would normally be \$200-\$350 on a regular basis.
46. As the parties have been permanently separated for more than four years, the relationship is at an end. In the circumstances, the Tribunal does not place any weight on the nature of the parties' commitment to each other at the time of this decision.
47. In relation to the financial aspects of the relationship, the Tribunal is of the view that the evidence before it is inconsistent with the commitment expected of a genuine partner relationship. There is very limited evidence before the Tribunal of any financial relationship between the parties and the Tribunal is not satisfied that the financial arrangements are consistent with that of a committed and genuine de facto couple.
48. Further, there is limited evidence of the nature of their household or that the parties lived together as a de facto couple. Whilst there is evidence of the fact that the parties may have resided in the same property, it is not evidence that they shared the household of a de facto couple or of the living arrangements of parties in a genuine partner relationship.
49. The Tribunal, having carefully considered all of the evidence, in relation to the nature of the commitment in the relationship, concludes that the degree of companionship and emotional support the parties drew from each other was minimal. The Tribunal is not satisfied that the parties' had a mutual commitment to a shared life to the exclusion of all others, or that the nature of the parties' commitment to each other was consistent with a genuine and continuing partner relationship.

#### **50. Overall Conclusions**

51. The Tribunal has considered separately and as a whole, the evidence before it regarding each of the prescribed matters under r. 1.09A, that is, the financial, household, social and commitment aspects of the relationship.
52. In forming a view, the Tribunal is mindful of the authority in *Ally v MIAC* [2008] FCAFC 49 at [32]–[35]; *Jayasinghe v MIMA* [2006] FCA 1700 at [35], citing *MIEA v Poche* (1980) 4 ALD



139 at [24] per Deane J which held that evidence of subsequent events may be taken into account if it 'tends to logically show the existence or non-existence of' the relationship at that particular time; and see also *Bretag v IRT* [1991] FCA 582 at [13]–[15].

53. Having carefully considered all the evidence and for the reasons above, the Tribunal is not satisfied that at the time of application, the parties had a mutual commitment to a shared life as a de facto couple to the exclusion of all others; that the relationship between them was genuine and continuing; and that they lived together and not separately or apart on a permanent basis. The Tribunal is therefore not satisfied the requirements of section 5CB(2) of the Act were met the time of the visa application.
54. Given these findings, the Tribunal is not satisfied that at the time the visa application was made the parties were in a de facto partner relationship as defined in the Act. Therefore, the review applicant does not meet the criterion in cl.820.211(2)(a). The Tribunal notes the review applicant alleges she suffered family violence during the relationship. However, given the Tribunal's conclusion in relation to cl.820.211(2)(a), there is no need for it to make a finding on the family violence issue at the time of decision. The relevant de facto relationship must have existed at the time of application before it can be determined that it has ceased on account of family violence. Accordingly, the Tribunal makes no finding in relation to whether family violence occurred in the review applicant's case as it has found she does not satisfy the threshold criteria to be in a de facto partner relationship at the time of application.
55. The Tribunal is therefore not satisfied that the parties' relationship fulfilled the criteria contained in cl 820.211(2)(a) of the regulations at the time the visa application was made and at the time of this decision. Therefore, the Tribunal finds that the review applicant does not meet the requirements of cl 820.211(2) and cl 820.221(1).
56. There is no evidence before the Tribunal that the review applicant meets the criteria on any other basis.
57. For the reasons above, the review applicant does not satisfy the criteria for the grant of the visa.

## **DECISION**

58. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

## ATTACHMENT - Extract from Migration Regulations 1994

### 1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.

*Note 1* See regulation 2.03A for the prescribed criteria applicable to de facto partners.

*Note 2* The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.

Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits *the* regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
    - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day to day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and
    - (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long term one.

- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).